IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 1255 of 2001
Date of Decision: 8.11.2006

Balkar Singh ...Petitioner

Versus

Bhagwan Singh ....Respondent

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: None for the petitioner.
Shri B.S. Jaswal, Advocate, for the respondent.

JUDGMENT

The tenant is in revision petition aggrieved against the order passed by the learned Appellate Authority, whereby the petitioner is ordered to be evicted on the ground of bona-fide requirement of the landlord; that operating loudspeaker is a source of nuisance to the landlord and the neighbourers and that the petitioner has materially impaired the value and utility of the shop in dispute.

It has been found by the learned Appellate Authority that the petitioner is running the business of electrical and electronic works and that a loudspeaker is depicted in one of the photographs. It has been found that since the premises is a part of the residential building, therefore, operating the loudspeaker is a source of nuisance to the landlord and the neighbourers. The finding recorded by the learned Appellate Authority on the aforesaid basis is unjustified and untenable. Merely because a loudspeaker is shown in the photograph, cannot be made a ground for eviction. It has not come on

record that the loudspeaker is used at odd hours or is used in such a manner so as to disturb the neighbourers' living in the vicinity of the demised premises. Consequently, the finding recorded by the learned Appellate Authority on this account is set aside as not sustainable.

Similarly, the finding that since there is a crack in the wall of the shop in dispute, therefore, the petitioner has materially impaired the value and utility of the shop, is again not tenable in law. If there is a crack in the wall of the shop, the same can be repaired. It has not come on the record as to how tenant is responsible for causing a crack in the wall of the shop in dispute. Therefore, even the eviction on the said ground is again not sustainable.

Lastly, the petitioner has been ordered to be evicted on the ground that the landlord requires the demised premises for his bona-fide use and occupation. Admittedly, the demised premises is part of the residential building. Though in the eviction petition, the landlord has pleaded that he requires the property for the use and occupation of his family members but in evidence the landlord has deposed that he wants the accommodation for running of a shop. It is, thus, apparent that the petitioner has sought ejectment of the tenant from a residential building for a non-residential purpose. This Court in **State Bank of Patiala v. S. Zulzuaoar Singh Virk and others 2003(2) PLR 112** and **Parmeshwari Devi v. Krishan Chander 2003 Haryana Rent Reporter 197**, relying upon Hon'ble Supreme Court judgment reported as **Attar Singh v. Inder Kumar 1967 Punjab Law Reporter 83,** has held that the residential building cannot be got vacated for a non-residential purpose. Therefore, eviction on the said ground is again not tenable.

In view of the above, the present revision petition is allowed. The impugned order is set aside. The eviction petition filed by the landlord is dismissed.

8.11.2006 (HEMANT GUPTA)
ds JUDGE